

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Petition for Emergency Declaratory and Other)	WC Docket No. 02-202
Relief)	
)	
Verizon Telephone Companies, F.C.C. Tariff)	Transmittal No. 226
Nos. 1, 11, 14, and 16)	

OPPOSITION

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Summary

Verizon's proposals are unlawful violating the Communications Act of 1934, as amended ("Communications Act"), and also the Commission's rules and policies. Moreover, if approved, Verizon's proposals will provide another tool by which Verizon can exploit its dominant position and weaken its competitive rivals. Commission sanction of the proposals will pave the way for similar filings at the state level regarding security deposits and discontinuance notice periods for local exchange services and, ultimately, negatively impact the competitive landscape for telecommunications services. Accordingly, the Emergency Petition and tariff revisions should be denied. In the alternative, consistent with recent decisions, the Commission should suspend the tariff revisions for the statutorily permitted five months pending an investigation into the justification and impact of Verizon's proposals.

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OPPOSITION

The National ALEC Association/Prepaid Communications Association (“NALA/PCA”) hereby files this Opposition to the above-captioned Petition for Emergency Declaratory and Other Relief of Verizon (July 24, 2002) (“Emergency Petition”) and associated tariff revisions.¹

Background

Following closely on the heels of similar tariff revisions by other incumbent local exchange carriers (“ILECs”),² Verizon has submitted the Emergency Petition and associated tariff revisions ostensibly to protect its financial interests in light of the “unprecedented financial stress and upheaval” in the telecommunications industry.³ Verizon argues that the proposals in

¹ See DA No. 02-1859 (July 31, 2002) (establishing a comment due date of August 15, 2002); *see also* Verizon Telephone Companies, F.C.C. Tariff Nos. 1, 11, 14, and 16, Transmittal No. 226 (July 25, 2002) (“Tariff Revision”). Various interested parties have already submitted pleadings in response to Verizon’s tariff filings.

² See Iowa Telecommunications Services, Inc., Tariff F.C.C. No. 1, Transmittal No. 22 (July 3, 2002); BellSouth Telecommunications, Inc., Tariff F.C.C. No. 1, Transmittal No. 657 (July 19, 2002); SBC, F.C.C. Tariff No. 73, Transmittal No. 2906 (August 2, 2002).

³ Verizon Description and Justification, Transmittal No. 226, at 6 (July 25, 2002) (“Verizon D&J”).

the Emergency Petition should be adopted to ensure that its financial health is not dragged down by the demise of those carriers whose business plans were inadequate. *See* Emergency Petition, at 1. In support of this assertion, Verizon states that its interstate uncollectible revenues doubled in 2001 relative to 2000,⁴ and that it is currently involved in 92 bankruptcy proceedings.⁵ As a result, Verizon requests approval to revise its interstate access tariffs to require its “customers to comply with additional safeguards if they either have poor payment performance or demonstrate objective indicia of credit risk.” *Id.* at 4. Many of these proposed changes, Verizon notes, already exist in tariffs of some of its customers, who are competitive interexchange carriers (“IXCs”).⁶ Verizon also requests that the Commission support ILECs’ efforts in bankruptcy proceedings to obtain adequate assurance of payment for service rendered to customers in bankruptcy, ensure that purchasers of bankrupt carriers’ existing service arrangements comply with the cure requirements of bankruptcy law, and direct competitive local exchange carriers (“CLECs”) to provide information necessary to coordinate carrier-to-carrier transfers.⁷

Specifically, Verizon’s tariff revisions change the terms and conditions governing the amount and when Verizon may collect security deposits and advance payments. *See* Verizon D&J, at 8. In addition to the existing Commission-sanctioned criteria for determining when a

⁴ *See* Verizon D&J, at 9; Reply Comments of Verizon to Petitions to Reject or Suspend and Investigate, Transmittal 226, at 4 (August 7, 2002) (“Verizon Reply”).

⁵ *See* Verizon D&J, at 6.

⁶ Verizon Reply, at 1, 7-8.

⁷ *Id.* at 6-10. NALA/PCA does not separately comment on these proposals.

carrier may obtain a security deposit from a customer,⁸ Verizon proposes to require a security deposit (or advance payment, at Verizon's election) from a customer: 1) who has fallen in arrears in any two months out of any consecutive twelve month period; 2) owes Verizon \$250,000 (or more) that is thirty days past due; 3) announces to Verizon or publicly states that it is unable to pay its debts; 4) is in receivership or bankruptcy; 4) has senior debt securities that are below investment grade; 5) has senior debt securities that are rated at the lowest investment grade rating category by a nationally recognized statistical rating organization and are put on review by the rating organization for a possible downgrade.⁹ Verizon also proposes shortening from 30 days to 7 days the mandatory waiting period between the time when Verizon gives notice to a carrier that stops paying, or otherwise violates certain tariff provisions, and when Verizon can refuse to process new and pending orders and/or discontinue service. *See* Emergency Petition, at 4.

The National ALEC Association/Prepaid Communications Association. NALA/PCA is a trade association comprised of companies that since 1996 have been providing local telephone service to hundreds of thousands of residential consumers nationwide.¹⁰ NALA/PCA members' core customers are those that historically have been considered high-risk – due, for example, to a poor credit history or lack of sufficient identification – and thus unable to obtain local telephone service from ILECs. For these consumers, prepaid local service may offer the only viable option

⁸ Under Verizon's current tariff, security deposits are warranted only from a customer with "a proven history of late payment" or which "does not have established credit." *See*, Verizon Telephone Companies, Tariff F.C.C. No. 1, § 2.4.1, at Original Page 2-26.

⁹ *See* Verizon D&J, at 3-4.

¹⁰ In addition to service providers, NALA/PCA members include a wide range of companies that support the prepaid local services industry.

for obtaining local telephone service, including access to 911 emergency services. In order to provide their services, NALA/PCA members either lease unbundled network elements or resell the flat-rate, local telephone services and custom calling features of ILECs, including services of Verizon. Some NALA/PCA members also provide interexchange services and may purchase access services from Verizon. NALA/PCA is also interested in this proceeding because Commission approval of the proposals will greatly influence future proceedings at the state level with respect to security deposits and notice periods for local exchange services.

Discussion

I. VERIZON’S TARIFF REVISIONS ARE UNLAWFUL

The Communications Act requires that a tariff be “just and reasonable” and not “unreasonab[ly] discriminat[ory],” and the Commission’s rules require that a tariff “contain clear and explicit” statements in order to ensure proper application of the tariff. *See* 47 U.S.C. §§ 201, 202; 47 C.F.R. §61.2. Verizon’s tariff revisions fail on all counts, and moreover, the tariff revisions grant Verizon extraordinary discretion to manipulate the application of its proposed tariff provisions raising serious anticompetitive concerns.

A. Security deposit/advance payment

Historically, the Commission has limited the application of security deposits only to a narrow class of customers, those with a history of late payments and those that do not have an established credit history.¹¹ As the Commission has stated, security deposit criteria that can be applied broadly are unreasonably onerous and are likely to have anticompetitive effects. *Id.* at

¹¹ *See Investigation of Access and Divestiture Related Tariffs*, 97 FCC 2d 1082, 1984 FCC LEXIS 2902, at *180-183 (1984) (“1984 Access Tariff Order”).

*182. While Verizon suggests that its new proposed security deposit (or advance payment, at Verizon's discretion) criteria are applicable only to customers that "have poor payment performance or demonstrate objective indicia of credit risk,"¹² they are, in fact, so vague and expansive as to apply virtually to all of Verizon's competitors that require access to Verizon facilities regardless of whether they are in fact legitimate credit risks.¹³

For instance, under the first new criterion, any carrier in arrears for any two months in a consecutive twelve month period would be subject to increased deposits. Verizon, however, sets no associated minimum threshold time or amount, and in theory a failure to pay a *de minimus* amount twice in a year could trigger a security deposit of disproportionate magnitude. Similarly, Verizon makes no distinction between disputed amounts and undisputed amounts in determining whether a carrier owes Verizon \$250,000 as proposed in the second criterion. As the NALA/PCA members have frequently experienced, Verizon regularly provides inaccurate bills, usually erring in its favor, but no such allowance for disputed amounts is considered in this minimum threshold.¹⁴ Finally, Verizon's argument that other carriers, many of whom are customers of Verizon, have tariff provisions that grant similar or greater authority to assess

¹² Emergency Petition, at 4.

¹³ See also, Petition of AT&T Corp., Transmittal No. 226, at 10-12 (August 1, 2002) (providing an extensive discussion regarding the problems associated with Verizon's proposed criteria).

¹⁴ Verizon's defends this criterion with the unsubstantiated assertion that to permit an allowance for disputed amounts would encourage gaming by customers. See Verizon Reply, at 19. Verizon also argues that it already has authority to assess a deposit in these two situations because the conditions merely make more concrete when a customer has a "proven history of late payments." Verizon Reply, at 9. Verizon's argument, however, is belied by its own filing which acknowledges that these new conditions are "in addition to," and not clarifications of, its existing deposit conditions. See Tariff Revision, at §2.4.1(A)(2).

security deposits on customers¹⁵ fails because Verizon ignores a fundamental difference – unlike a customer of a competitive carrier, a customer of a dominant local exchange carrier, who is dissatisfied with the terms of a tariffed service, is in general unable to seek such services from other providers.¹⁶ Accordingly, the Commission should reject Verizon’s tariff revisions.

B. Seven-day discontinuance notice period

The 30-day notice period has been a staple of LEC access tariffs for over fifteen years, since the initial post-divestiture access tariff investigations in 1984. *See 1984 Access Tariff Order*. In that proceeding, the Commission expressed concerns regarding 10-day and 20-day notice periods, which ultimately led the ILECs to propose a more extended 30-day period. *Id.* at *140. In 1987, when BellSouth proposed a 15-day notice period, the Commission concluded that the “revisions may place undue burdens on customers,” and attached conditions to the proposal which BellSouth did not elect or was unable to satisfy.¹⁷

The 7-day notice period proposed by Verizon is extraordinary, and Verizon cites no precedent where the Commission has authorized an ILEC to have such a short notice period.¹⁸

¹⁵ *See* Verizon Reply, at 8-9.

¹⁶ In an argument that stands the Communications Act on its head, Verizon contends that as a dominant provider subject to greater regulation it is necessary to grant Verizon protection from its customers through its tariffs. *See* Verizon Reply, at 23-24. Verizon, however, cites no precedent for such a position.

¹⁷ *See In the Matter of Annual 1987 Access Tariff Filings*, 1986 FCC LEXIS 2134, at *136-138 (1986) (“*1987 Access Tariff Order*”).

¹⁸ Verizon implies that the discontinuance notice period is longer but, in fact, under Verizon’s proposal there is no requirement for Verizon to wait more than 7 days before terminating service. *See* Verizon Reply, at 20 (“[T]he notice period ... *often* is in addition to other mandatory wait periods ... and is *usually* triggered by Verizon only after it and the customer have been involved in protracted negotiations.”) (emphasis added).

In practice, an abbreviated time frame is unlikely to provide a customer sufficient time to review the bill, make payment, dispute erroneous charges, or investigate or cure alleged tariff violations.¹⁹ Seven days is also not sufficient time for a carrier threatened with termination to seek alternative arrangements, if any, from other access providers. The ability to promptly terminate service also provides Verizon considerable leverage in negotiating billing or other disputes and increases Verizon's ability to behave anticompetitively.

Finally, by shortening the notice period, there is a greater likelihood that end-users will ultimately suffer service interruptions, a stated concern of highest priority for the Chairman at this time.²⁰ In fact, such a short notice period would be contrary to many state laws or regulations, which typically require carriers to provide end-users at least 30-day notice prior to termination – an obligation customers of Verizon could not comply with, if the tariff revisions were approved. Accordingly, the Commission should deny Verizon's proposal for a 7-day notice period.

C. Verizon has not provided any credible justification to support its tariff revisions

Importantly, despite the overwhelming negative impact of the proposals, Verizon has provided no proof that the current economic environment is especially harmful to its operations or that the current regulations are inadequate to address its concerns.²¹ Initially, Verizon stated

¹⁹ See *1987 Access Tariff Order*, at *136-138 (questioning whether a 15-day notice period provides sufficient opportunity for customers to review their bills).

²⁰ See Written Statement of Michael K. Powell, "Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operations of Essential Communications," at p.1 (July 30, 2002).

²¹ Under Commission precedent, material changes to tariffed provisions of long-term service arrangements require a demonstration of substantial cause to justify such a change. *RCA*

without more that its interstate uncollectible revenues doubled in 2001 relative to 2000.²²

Pressed by commenters, Verizon later clarified this statement by revealing that the percentage growth of such uncollectible revenues, while doubling, increased only 0.6% for the relevant period, and again Verizon offered no analytical support that such an increase was significant.²³

Further, Verizon's unsubstantiated assertion that it is involved in various bankruptcy proceedings does not demonstrate that it faces a significant risk of higher uncollectibles. Verizon has not proven that this number is extraordinary or significant in any way, and in any event, mere participation in a bankruptcy proceeding does not mean that Verizon will not obtain adequate assurance of payment for its services.²⁴

While the Commission has stated (as Verizon notes) that it is not "inclined to second guess a carrier's decision, with respect to a particular customer, to impose deposit, advance payment or other security arrangements provided for in its tariff,"²⁵ the Commission in the same breath (which Verizon fails to note) has "cautioned that a decision to terminate a customer's

American Communications, Inc., 86 FCC 2d 1197 (1981); 94 FCC 2d 1338 (1983); 2 FCC Rcd 2363 (1987).

²² See Verizon D&J, at 9.

²³ See Verizon Reply, Exhibit B, at 1. Further, both Sprint and WorldCom note that impact of the increase in uncollectibles on Verizon's financial performance for the year 2001 appears to be negligible. See Sprint, at 4 (interstate rates of return dropped only .13%); WorldCom, at 18 ("Verizon's aggregate interstate rate of return in 2001 was a still-excessive 17.1 percent, far above Verizon's cost of capital and the Commission's most recent-prescribed rate of return of 11.25 percent.").

²⁴ See 11 U.S.C. §366(b) (utilities who do not receive "adequate assurance" of payment may alter, terminate, or discontinue service).

²⁵ *Affinity Network Inc. v. AT&T*, 7 FCC Rcd 7885, at ¶3 (1992).

service, or [the] refusal to accept or to provision a customer's additional orders for service, particularly when such customer ... is a competitor, has grave consequences and should not be taken lightly.”²⁶ Verizon's complete failure to provide any concrete support for its proposals highlights the concern that Verizon is merely seeking to exploit the current economic situation caused by the WorldCom bankruptcy in order to strengthen its dominant market position and weaken the capability of its rivals. Ultimately, Verizon's proposals, while certainly buttressing its financial security, are anticompetitive, substantially decreasing the working capital of competitors and lessening their ability to expand service offerings.²⁷ Accordingly, the Commission should deny Verizon's Emergency Petition and tariff revisions.

II. IN THE ALTERNATIVE, THE COMMISSION SHOULD SUSPEND THE TARIFF REVISIONS AND INVESTIGATE VERIZON'S PROPOSALS

The Commission has already recognized in two recent proceedings involving tariff revisions that proposals to shorten the discontinuance notice period and expand the criteria for requiring security deposits, at a minimum, raise substantial questions regarding their lawfulness and, accordingly, require suspension and investigation of the revisions. In *Iowa Telecommunications Services, Inc.*, the ILEC, Iowa Telecommunications Services, Inc. (“Iowa

²⁶ *Id.* at ¶4.

²⁷ As noted by several parties, the increased security deposit amounts are not insignificant and may reach the hundreds of millions. *See e.g.*, Petition of AT&T Corp., Transmittal No. 226, at 12 (August 1, 2002); Petition of Sprint to Reject or Alternatively Suspend and Investigate, Transmittal No. 226, at 8 n.8 (August 1, 2002). Verizon's actions may not only jeopardize the current financial position of otherwise healthy competitive providers who are facing some liquidity constraints, but may also lengthen the time period of recovery for the telecommunications sector. As Chairman Powell recently noted, expansion of services and increasing consumer demand for such services may lead to faster recovery for the telecommunications sector. *See* Powell Statement, at 13-14.

Telecom”), proposed to reduce from 30 days to 15 days the notice period for discontinuing service and to expand its authority to collect security payments from, *inter alia*, existing customers who “represent[] a significant financial risk based on objective financial standards.”²⁸

The Commission determined that the tariff revisions raised concerns regarding whether the revisions are unjust and unreasonable in violation of §201(b) of the Communications Act and ambiguous in violation of Sections 61.2 and 61.54 of the Commission’s rules. *See id.* In *BellSouth Telecommunications, Inc.*, BellSouth proposed to expand its authority to collect security deposits, *inter alia*, from customers who are not credit worthy as determined by a “commercially acceptable credit scoring tool applied in a commercially reasonable manner.”²⁹

The Commission concluded that BellSouth’s proposed tariff revisions raised concerns regarding whether the revisions violate the Commission precedent limiting the applicability of security deposits to those customers with poor payment history or no credit history, are unjust and unreasonable in violation of Section 201(b) of the Communications Act, are vague and ambiguous in violation of Sections 61.2 and 61.54 of the Commission’s rules, and are material changes requiring a demonstration of substantial cause. *See id.*

Verizon’s proposed tariff revisions are not significantly different from those proposed by Iowa Telecom or BellSouth. In fact, Verizon’s proposal regarding the discontinuance notice period is 8 days shorter than that found questionable in *Iowa Telecommunications, Inc.* Verizon itself makes no effort to distinguish the cases or argue that a suspension and investigation is not

²⁸ *In the Matter of Iowa Telecommunications Services, Inc.*, Transmittal No. 22, DA 02-1732, at ¶1 (July 17, 2002) (citing tariff revision).

²⁹ *In the Matter of BellSouth Telecommunications, Inc.*, Transmittal No. 657, DA 02-1886 (August 2, 2002).

appropriate. *See generally*, Verizon Reply. Accordingly, pursuant to its authority under Section 204(a) of the Communications Act, the Commission should, at a minimum, suspend for five months and investigate the justification and impact of the proposals. Additionally, for administrative economy and efficiency, NALA/PCA urges the Commission to establish a generic proceeding to resolve this and all other similar tariff revisions.

Conclusion

For the aforementioned reasons, NALA/PCA respectfully requests that the Commission deny the Petition for Emergency Declaratory and Other Relief and associated tariff revisions.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Opposition was sent by first-class mail, postage prepaid, on August 15, 2002 to the following:

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